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Daniel C. George

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EXAMINER

CONLEY, FREDRICK C

ART UNIT

PAPER NUMBER

3673

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/748,491

Applicant(s)

GEORGE, DANIEL C.

Examiner

FREDRICK C CONLEY

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

The indicated allowability of claim s 19-20 is withdrawn in view of the previously cited reference(s) to George, Lederman, and Lahn . Rejections based on the previously cited reference(s) follow. The Examiner regrets any inconvenience.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claimq 1-8, 10-15, and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,148,564 to Reder in view of U.S. Pat. No. 4,01 1,611 to Lederman.

Claim 1, Reder discloses a support comprising;

an inner liner 14 having an outer surface and an inner surface defining an enclosure, an outer liner 16 having an opening 26 wherein the inner liner is positioned through the opening of the outer liner having an outer surface, an inner surface, the inner liner being positioned such that the outer surface of the inner liner is associated with the inner surface of the outer liner; and a fill material 18 positioned within the enclosure of the inner liner, and wherein at least a portion of the inner liner and the outer liner comprises a material inherently capable of elastic deformation (col. 3 lines 36-42). Reder fails to disclose an inner liner having an opening providing access into the enclosure. Lederman discloses a support having an opening 42 within a liner 32. It would have been obvious to employ an opening as taught by Lederman within the inner

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liner of Reder in order to provide access into the enclosure to allow the convenient extraction or addition of elastic materials from and to the support. With regards to the support employed as a chair it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQZd 1647 (1987). Elastic is defined as capable of returning to an initial state after deformation thus the material taught by Reder is inherently capable of returning to it's initial state as long as the degree of deformation does not exceed the materials elastic limits.

Claim 2 and 4, wherein the inner liner includes a closure member capable of substantially sealing the opening of the inner liner (col. 4 lines 5-16).

Claim 3 and 5, wherein the closure member comprises a zipper (col. 4 lines 5-16).

Claim 6, wherein substantially the entirety of the inner liner comprises a material inherently capable of elastic deformation (col. 3 lines 36M2)(Reder).

Claim 7, wherein substantially the entirety of the outer liner comprises a material inherently capable of elastic deformation (col. 3 lines 36M2)(Reder).

Claim 8, wherein the material is capable of elastic deformation in a plurality of directions.

Claim 10, Reder discloses the claimed invention except for the material being capable of stretching from a first un-stretched configuration to a second stretched configuration which is approximately 5% to 120% greater than the un-stretched configuration. It would have been an obvious to have the material being capable of

stretching as stated above, since Applicant has not disclosed that the amount of stretching is critical and it would appear that the material taught by Reder would perform equally well.

Claim 11, Reder discloses the claimed invention except for the material comprising a weight of between approximately 4 ounces per square yard and 20 ounces per square yard. It would have been an obvious to have the material being capable of stretching as stated above, since Applicant has not disclosed that the weight is critical and it would appear that the weight of the material taught by Reder would perform equally well.

Claim 12, wherein the inner surface of the outer liner substantially abuts the outer surface of the inner liner substantially continuously about respective surfaces thereof (Reder).

Claims 13-14, Reder fails to disclose the fill material comprising a plurality of small members. Lederman discloses a fill material comprising a plurality of small members of polystyrene (col. 4 lines 65-67). It would have been obvious to one having ordinary skill in the art at the time of the invention to employ the fill material as taught by Lederman in order to extend the life of the support.

Claim 15, Reder, as modified, discloses the claimed invention except for the small members have a largest dimension between approximately 1 mm and 25mm. It would have been an obvious to have the small members have a largest dimension between approximately 1 mm and 25mm, since Applicant has not disclosed that the dimension of the small members is critical and it would appear that the weight of the members taught by Reder would perform equally well.

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Claim 17, Reder discloses the claimed invention except for the largest dimension between approximately 2 feet and 5 feet. It would have been an obvious to have the largest dimension between approximately 2 feet and 5 feet, since Applicant has not disclosed that the dimension is critical and it would appear that the dimension taught by Reder would perform equally well.

Claim 18, wherein each of the inner liner and the outer liner comprise a plurality of panels (18,28) attached to each other.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5, 148,564 to Reder in view of U.S. Pat. No. 4,011,611 to Lederman, and further in view of U.S. Pat. No. 4,780,921 to Lahn et al.

Claim 9, Reder discloses all of the Applicant's claimed limitations except for the material comprising a spandex material. Lahn discloses a support wherein a cover material comprises a spandex material (col. 4 lines 21-27). It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a spandex material as taught by Lahn within the inner and outer liners of Reder in order to enhance the desired adjustable resilience of the assembly.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,148,564 to Reder in view of U.S. Pat. No. 4,011,611 to Lederman, and further in view of U.S. Pat. No. 5,375,278 to Van Winkle.

Claim 16, Reder discloses all of the Applicant's claimed limitations except for the outer liner and the inner liner comprising a substantially spherical configuration. Van Winkle discloses a support having an inner and outer liner (12,16) having a spherical

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configuration (fig. 3). It would have been obvious to one having ordinary skill in the art at the time of the invention to have the inner and outer liners with a spherical configuration as taught by Van Winkle in order to provide a shape that readily conforms to a selected body pad.

Claims 1-15, and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,279,184 to George in view of U.S. Pat. No. 4,011,611 to Lederman and further in view of U.S. Pat. No. 4,780,921 to Lahn et al.

Claim 1, George discloses a support comprising:

an inner liner 14 having an outer surface and an inner surface defining an enclosure, an outer liner 12 having an opening 32 wherein the inner liner is positioned through the opening of the outer liner having an outer surface, an inner surface, the inner liner being positioned such that the outer surface of the inner liner is associated with the inner surface of the outer liner, and a fill material 16 positioned within the enclosure of the inner liner. George fails to disclose an inner liner having an opening providing access into the enclosure. Lederman discloses a support having an opening 42 within a liner 32. It would have been obvious to employ an opening as taught by Lederman within the inner liner of George in order to provide access into the enclosure to allow the convenient extraction or addition of elastic materials from and to the support. George fails to disclose at least a portion of the inner liner and the outer liner comprises a material capable of elastic deformation. Lahn discloses a support wherein a cover material comprises a spandex material (col. 4 lines 21-27). It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a

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spandex material as taught by Lahn with the material of the inner and outer liners of George in order to enhance the desired adjustable resilience of the assembly.

Claim 2 and 4, wherein the inner liner includes a closure member capable of substantially sealing the opening of the inner liner (col. 3 lines 36-39).

Claim 3 and 5, wherein the closure member comprises a zipper.

Claim 6, wherein substantially the entirety of the inner liner comprises a material inherently capable of elastic deformation.

Claim 7, wherein substantially the entirety of the outer liner comprises a material inherently capable of elastic deformation.

Claim 8, wherein the material is capable of elastic deformation in a plurality of directions.

Claim 10, George discloses the claimed invention except for the material being capable of stretching from a first un-stretched configuration to a second stretched configuration which is approximately 5% to 120% greater than the un-stretched configuration. It would have been an obvious to have the material being capable of stretching as stated above, since Applicant has not disclosed that the amount of stretching is critical and it would appear that the material taught by George would perform equally well.

Claim 11, George discloses the claimed invention except for the material comprising a weight of between approximately 4 ounces per square yard and 20 ounces per square yard. It would have been an obvious to have the material being capable of stretching as



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stated above, since Applicant has not disclosed that the weight is critical and it would appear that the weight of the material taught by George would perform equally well.

Claim 12, wherein the inner surface of the outer liner substantially abuts the outer surface of the inner liner substantially continuously about respective surfaces thereof (George).

Claims 13-14, wherein the fill material comprising a plurality of small members.

Claim 15, George discloses the claimed invention except for the small members have a largest dimension between approximately 1 mm and 25mm. It would have been an obvious to have the small members have a largest dimension between approximately 1 mm and 25mm, since Applicant has not disclosed that the dimension of the small members is critical and it would appear that the weight of the members taught by George would perform equally well.

Claim 17, George discloses the claimed invention except for the largest dimension between approximately 2 feet and 5 feet. It would have been an obvious to have the largest dimension between approximately 2 feet and 5 feet, since Applicant has not disclosed that the dimension is critical and it would appear that the dimension taught by George would perform equally well.

Claim 18, wherein each of the inner liner and the outer liner comprise a plurality of panels attached to each other (fig. 1).

Claim 19, further comprising at least one intermediate liner 22 positioned between the inner liner and outer liner.

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Claim 20, wherein the at least one intermediate liner comprises one intermediate liner 22'.

### ***Response to Arguments***

Applicant's arguments filed 3/31/05 have been fully considered but they are not persuasive.

As stated above, Reder discloses a portion of the inner liner and the outer liner comprising a material that is inherently capable of elastic deformation (col. 3 lines 36-42). Elastic is defined as capable of returning to an initial state after deformation thus the material taught by Reder is inherently capable of returning to it's initial state as long as the degree of deformation does not exceed the materials elastic limits since the material of the outer liner is described as flexible and the material of the inner liner is described as resiliently pliable. Furthermore, the Applicant has failed to recite any specific structural limitations that are not already taught by Reder.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Reder discloses a support having an inner and outer liner. Lederman discloses a support having an

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opening 42 within a liner 32. The combination as a whole would suggest a support having an inner and outer liner with an opening within the inner liner in order to provide access into the enclosure to allow the convenient extraction or addition of elastic materials from and to the support. With regards to the support employed as a chair it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C CONLEY whose telephone number is 571-272-7040. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HEATHER SHACKELFORD can be reached on 571-272-7049. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FC

  
**ALISON PICKARD**  
**PRIMARY EXAMINER**